

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

JERRY LYNN LOUDERMILK,)

Plaintiff,)

v.)

Case No. 4:22-cv-01118-NAD

SOCIAL SECURITY)
ADMINISTRATION,)
COMMISSIONER,)

Defendant.)

REPORT AND RECOMMENDATION

On February 2, 2023, the Defendant Commissioner filed an “Unopposed Motion For Entry Of Judgment Under Sentence Four of 42 U.S.C. § 405(g) With Remand Of The Cause To The Defendant.” Doc. 11. For good cause shown, and with no opposition from Plaintiff Jerry Lynn Loudermilk, this report recommends that the Commissioner’s unopposed motion for remand (Doc. 11) be granted.

Sentence four of 42 U.S.C. § 405(g) provides that the court “shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the case for a rehearing.” 42 U.S.C. § 405(g).

In the motion for remand, the Commissioner requests that the court “enter a judgment with a reversal and remand of the cause to the Commissioner.” Doc. 11

at 1 (“Plaintiff, through counsel, does not oppose this motion.”). In particular, the Commissioner requests remand “to the Commissioner for further action.” Doc. 11 at 2. The Commissioner also states appropriate action for remand, suggesting that the agency will (1) update relevant records as necessary, (2) offer Plaintiff Loudermilk the opportunity for a new hearing, (3) further consider whether medical improvement occurred, (4) further consider whether the evidence supports any severe mental impairments, and (5) issue a new decision. *See* Doc. 11 at 2.

RECOMMENDATION

For the reasons stated above, and pursuant to 42 U.S.C. § 405(g), this report recommends that the Commissioner’s motion (Doc. 11) be **GRANTED**, and that this case be **REVERSED and REMANDED**.¹

NOTICE OF RIGHT TO OBJECT

A party may file specific written objections to this report and recommendation. The party must file any objections with the Clerk of Court within fourteen (14) calendar days from the date the report and recommendation is entered.

¹ For two reasons, this report does not include a recommendation on Loudermilk’s pending “Motion To Enlarge Time For Filing Fee Petition And Affidavits” (Doc. 12). First, it appears that the Commissioner opposes the motion, but the Commissioner has not yet filed any opposition or otherwise stated the basis for any opposition. Second, the motion cites as precedent the “prior remand of this matter.” Doc. 12 at 3; *see* N.D. Ala. Case No. 4:19-cv-00387-CLM. In that case, the district judge ruled on the “same motion” (Doc. 12 at 3), after case reassignment, and after having entered final judgment. *See* N.D. Ala. Case No. 4:19-cv-00387-CLM, Docs. 13–18.

Objections should specifically identify all findings of fact and recommendations to which objection is made and the specific basis for objecting. Objections also should specifically identify all claims contained in the complaint that the report and recommendation fails to address. Objections should not contain new allegations, present additional evidence, or repeat legal arguments.

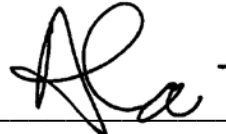
Failing to object to factual and legal conclusions contained in the magistrate judge's findings or recommendations waives the right to challenge on appeal those same conclusions adopted in the district court's order. In the absence of a proper objection, however, the court may review on appeal for plain error the unobjected to factual and legal conclusions if necessary in the interests of justice. 11th Cir. R. 3-1.

Upon receipt of objections, a United States District Judge will review de novo those portions of the report and recommendation to which specific objection is made and may accept, reject, or modify, in whole or in part, the undersigned's findings of fact and recommendations. The district judge also may refer this action back to the undersigned with instructions for further proceedings.

A party may not appeal the magistrate judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. A party may

only appeal from a final judgment entered by a district judge.

DONE this March 23, 2023.

A handwritten signature in black ink, appearing to read "Ala.", is positioned above a horizontal line.

NICHOLAS A. DANELLA
UNITED STATES MAGISTRATE JUDGE